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The rainfall of lawsuits against the State does not stop

LAWSUITS

The country faces 11 lawsuits, and three more may be added this year. Most of them were submitted as of 2008. The total of such lawsuits amounts to no less than US\$ 5,492 million.

In 2001, the Spanish oil company Repsol surprised Ecuador with an international lawsuit, the first one in the history of the country.

During the following years, 23 additional lawsuits were filed against Ecuador by foreign companies.

From such lawsuits 11 are still pending, but the list may increase since three companies (Quiport, CGC and Merck) announced not too long ago their decision to file claims against the country in foreign courts.

These figures were submitted yesterday by Diego García, Attorney for the State in these legal processes, at the IV International Arbitration Conference. The meeting was arranged by the International Arbitration and Mediation Center, the Ecuadorian-American Chamber of Commerce, and the Ecuadorian Arbitration Institute.

The largest number of lawsuits was filed in 2008 and 2009.

To-date, the lawsuits amount to US\$ 5,492 millions; however, this figure will increase as the companies define the amounts of the claims filed against the country.

The figure represents **almost one-half of the State Budget initially approved for this year** (US\$ 12,605 millions).

Another information furnished by García was that the number of foreign lawsuits, instead of being reduced, has been increasing; so, while in 2002 three lawsuits were filed against Ecuador, 10 were filed in 2008 and 2009.

The rainfall of lawsuits obligated the Office of the State Attorney General to increase its personnel and outside consulting services, in order to be able to process the arbitration procedures.

The Office of the State Attorney General has now nine officers of its own and eight foreign firms to process the cases. This figure is quite higher if compared with the two firms that provided consulting services to this entity in 2002.

However, García recognizes that the processing of so many arbitration procedures also complicates the defense duties.

At any event, from the arbitration centers in which the cases are being heard, the one generating the most criticism on the part of the Government is CIADI, an entity ascribed to the World Bank.

From the 11 cases filed against the country, six are being tried in said center. The case deemed to be the most important for the State due to its amount, is being heard in this center. Such case is the lawsuit for US\$ 3,200 million filed by Oxy.

Ecuador is the second country with the largest number of lawsuits against it, next to Argentina, which has more than 30.

All these elements led the Government to look for other alternatives for the arbitration procedures.

First, it announced its departure from CIADI, which will become effective in January 2009 [sic]. Although this does not affect the current cases, what the Government wants is to stop any future lawsuits. Instead of CIADI, the Government is promoting regional centers.

Expert Rodrigo Jijón believes that the departure from CIADI does not guarantee that any future demands are going to be stopped, since the State has expressed its consent to go to CIADI through investment contracts and treaties currently in force.

For García, this matter must be resolved by CIADI when the departure of Ecuador from this entity becomes effective.

For expert Juan Manuel Merchán, who also participated in the forum, the departure from CIADI generates uncertainty among investors. García does not think so; he said that it may have an influence, but that “the place in which any eventual conflicts with the State is to be resolved is not the only factor defining an investment”. Merchán stated that the regional arbitration centers will be positive if they guarantee impartiality.

1. Occidental (Oxy)

Commencement of the lawsuit: May 17, 2006

Amount: The Company alleges US\$ 3,200 millions.

Place: CIADI (entity with headquarters in Washington)

Stage: The arbitration procedure already started and is in its last stage; we are waiting for the judgment from the tribunal.

Lawsuit: Oxy operated Block 15 in the Ecuadorian Amazon Region and generated 100,000 barrels of crude oil per day, which 20% of the total country's production. The State terminated its contract unilaterally because it [Oxy] assigned 40% of the Block to the company Encana without the State's authorization.

2. Vatadur

Commencement of the lawsuit: 2006

Amount: The Company alleges US\$ 398 million.

Place: CIAC (entity with headquarters in Miami)

Initial Stage: It is being analyzed if the arbitration procedure is applicable.

Lawsuit: The Minister of Health contracted Vatadur to construct three ambulance boats for US\$ 492,000 each; however, the company claimed US\$ 804,866 for each one. Although the alleged loss does not reach US\$ 3 million, the Company claims US\$ 398 million from the State for damages and loss of profits.

3. Murphy

Commencement of the lawsuit: April 15, 2008

Amount and place: US\$ 185 millions. The case is in CIADI.

Stage: Initial stage.

Lawsuit: It refuses to pay an oil tax.

4. Repsol

Commencement of the lawsuit: August 8, 2008

Amount and place: Has not been determined. The case in CIADI.

Stage: Initial stage.

Lawsuit: It refuses to pay an oil tax

5. Chevron-Texaco II

Commencement of the lawsuit: 2006

Amount and place: US\$ 1,200 million. The case is under Uncitral rules (the parties stipulate the place).

Claim: The State would have appropriated Chevron's crude during its association with the Company.

6. Perenco

Commencement of the lawsuit: June 4, 2008

Amount and place: US\$ 434 millions. The case is in CIADI.

Stage: Initial stage.

Lawsuit: It refuses to pay an oil tax

7. Chevron III

Commencement of the lawsuit: 2008

Amount: Has not been determined.

Place and stage: Under Uncitral rules (the parties stipulated the place). Initial Stage.

Lawsuit: Indigenous communities accuse Chevron of causing environmental damages, and are asking for an indemnification of US\$ 27 billions. Chevron alleges that Ecuador must also be liable for this lawsuit since the operations of Chevron were carried out in the Amazon Region in association with the State. The company filed three lawsuits against the State. The State won the first one, and is now facing two more.

8. Ulysseas

Commencement of the lawsuit: 2009

Amount: The Company has not yet submitted to amount of the lawsuit.

Place: Under Uncitral rules (the parties stipulate the place).

Stage: Initial stage. It is being analyzed if the arbitration procedure is applicable. If the tribunal decides that it has no jurisdiction, then the case ends.

Lawsuit: The State alleges that this Company failed to comply with its power generation contract and withdrew its operating permit. The Company, in turn, claims that the State affected its investments.

9. Burlington

Commencement of the lawsuit: June 2, 2008

Amount and place: The amount has not been determined. The case is in CIADI.

Stage: Initial stage.

Lawsuit: It refuses to pay an oil tax

10. Unete (from Bolivia)

Commencement of the lawsuit: 2009

Amount and place: Amount has not been determined. It is under Uncitral rules.

Stage: Initial stage.

Lawsuit: The State terminated the telecommunications concession contract.

11. MCI

Commencement of the lawsuit: 2002

Amount: US\$ 75 millions. The case is in CIADI.

Stage: Ecuador terminated the power generation contract and won the case, but MCI asked that said decision be cancelled.

12. CGC

Lawsuit was announced on 2009

Stage: It announced that it will file a lawsuit against the State. There are six months to reach an amicable agreement. If this is not attained, the arbitration procedure will commence. The Company claims that the State suspended the oil operations.

13. Quiport

Lawsuit was announced on: 2009

Stage: It announced that it will file a lawsuit against the State. There are six months to reach an amicable agreement. If this is not attained, the arbitration procedure will commence. The Municipality of Quito requested the renegotiation of its contract to construct the new airport.

14. Merck (from the USA)

Lawsuit was announced on: 2009

Stage: It announced that it will file a lawsuit against the State (see previous case). This is a lawsuit between private companies (Merck and a local company), but Merck claims that the State did not guarantee its right to justice.